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THE STANDARD OIL DECISION (United States of America vs. Standard Oil Company of New Jersey et al. In Equity. Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, Nov. 20, 1909) follows closely the reasoning of the Supreme Court in the Northern Securities case. The decision is based on the provisions of the Sherman Anti-Trust Law that every combination in restraint of interstate or international commerce is illegal, and that every person (or corporation) monopolizing or conspiring with others to monopolize any part of interstate or international commerce is guilty of a misdemeanor. The court applies the following rules to the facts in the case: that the test of the legality of a combination under the act is its direct and necessary effect upon competition in interstate or international commerce; that if the necessary effect is to directly and substantially restrict free competition in such commerce, it violates the law; that the parties to the combination are presumed to intend the inevitable result of their acts, and neither their actual intent nor the reasonableness of the restraint imposed may withdraw it from the denunciation of the statute, and that the exchange of stock of competitive corporations engaged in interstate commerce for stock of a single corporation is illegal under the law when the necessary effect is a direct and substantial restriction of competition in that commerce.

The court points out that the existence in a combination of the power to restrict competition is indicative of the character of the combination, for it is to the interest of the parties that such power should be exercised, and the presumption is that it will be. In the present case the court holds that it has been exercised and that the principal company (the Standard Oil Company of New Jersey) by means of its stock control and the commanding volume of the oil business which it acquired thereby has prevented competition between the corporations it controls, and that the power to fix prices and prevent competition was greater and more effective than such power could have been in the hands of 3,000 scattered stockholders.

Because this power to restrict competition in interstate commerce was the absolute power to prevent competition among the subsidiary corporations, and because it was greater, more effective and more durable than that which the stockholders had previously had, because many of the subsidiary companies were potentially competitive and were engaged in interstate commerce, the necessary effect of the transfer of stock of the subsidiary companies to the principal company was a direct and substantial restriction of that commerce, and the transfer and the operations of the companies under it are held to constitute a combination or conspiracy in restraint of interstate and international commerce in violation of the Anti-Trust Act of July 2, 1890.

The court states further that the true construction of the second section of the Anti-Trust Law is that while unlawful means to monopolize and to continue an unlawful monopoly of interstate

and international commerce are misdemeanors and enjoinable under it, monopolies of part of interstate and international commerce by legitimate competition however successful are not denounced by the law and may not be forbidden by the courts, but that in the present case the combination constitutes illegal means of monopoly.

The bill is dismissed against a number of the subsidiary companies on the ground that they were not proved to be engaged in the operation or the carrying out of the combination. Against the other defendants the court decrees that the Standard Oil Company of New Jersey be enjoined from voting any of the stock or exercising any control of the subsidiary companies through the ownership of stock acquired by virtue of the combination. The subsidiary companies are enjoined from paying any dividends to the principal company or permitting it to exercise any control by virtue of the stock secured by means of the combination. All the defendants are enjoined from continuing the combination or entering into any other the effect of which would be to restrain or monopolize interstate commerce in petroleum and its products. The defendants are also enjoined from engaging in or continuing interstate commerce in petroleum and its products during the continuance of the illegal combination.

RECENT DEVELOPMENTS REGARDING THE FEDERAL CORPORATION TAX LAW. The form on which corporations will make their returns of net income was approved by President Taft on November 26th. It is now in the hands of the printer and will be made public in a week or ten days. Two copies of the blank form will be sent to each one of the 122,000 corporations which are required to make the report. The Wholesale Merchants Association of Little Rock, Arkansas, has placed itself on record as denouncing the law as an unjust burden upon mercantile and manufacturing corporations. The Philadelphia Foundrymen's Assocation has declared it discriminatory. The St. Paul Jobbers and Manufacturers Association is endeavoring to get similar organizations all over the country to join in a protest against the tax. The Manufacturers Association of New York has recommended the amendment of the law by striking out the publicity features. The Illinois Manufacturers Association sent a delegation to Washington to protest to President Taft against the inquisitorial features of the law and to suggest the suspension of the law until a test case can be decided. One or two large corporations have been mentioned as returning to the partnership form of conducting business, but up to the present time this device does not promise to be largely followed. The suggestion has been made that the law might be declared void because it imposes a tax on interest received by corporations from government bonds. The Ohio State Board of Commerce has announced its intention to secure a repeal of the law and to test its constitutionality. Allen R. Foote, Commissioner of the Ohio State Board of Commerce, is reported to be at the head of a national movement to fight

the law. The plan is to form a national committee and state committees; the former to institute and press to final decision a suit to test the constitutionality of the law in the Supreme Court of the United States; the latter, through its members, to prepare and circulate petitions requesting congressmen to vote for the repeal of the law, while the state committee itself brings pressure to bear on the senators.

ILLINOIS BUILDING CORPORATIONS ARE HELD ILLEGAL by the denial of a rehearing in the case of People vs. Shedd, 241 Ill. 155 (referred to in our September-October number). The Court added to the original opinion an explanation of its former ruling on safety vault corporations to the effect that such corporations cannot "under the pretense of erecting a building for corporate purposes construct a building much larger than required for its legitimate business, containing offices intended to be rented for business purposes and engage in the business of renting such offices," thus inviting an attack upon a class of corporations that have heretofore been considered secure under the guise of safety vault companies. It is reported that an effort is being made to carry the case to the United States Supreme Court.

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INSPECTION OF THE STOCK BOOK OF A FOREIGN CORPORATION in the State of New York is permitted to any stockholder without regard to the intent of the stockholder in so examining the books. (Robert E. Henry vs. Babcock & Wilcox Co., Appellate Division, Supreme Court of New York, November 9, 1909.)

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